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LIBERTY MUTUAL FIRE INSURANCE COMPANY

11  
12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 LARGO CONCRETE, INC., a California  
Corporation; N.M.N. CONSTRUCTION,  
15 INC., a California Corporation,

16 Plaintiffs,

17 v.

18 LIBERTY MUTUAL FIRE INSURANCE  
COMPANY, a Massachusetts Corporation,  
19 and DOES 1 through 100, inclusive.

20 Defendants.  
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24 AND RELATED COUNTERCLAIM  
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Case No. C07-04651 CRB (ADR)

Hon. Charles R. Breyer  
[Complaint Filed: September 10, 2007]

**[PROPOSED] ORDER ON LIBERTY  
MUTUAL FIRE INSURANCE  
COMPANY'S OBJECTIONS TO THE  
DECLARATIONS SUBMITTED IN  
SUPPORT OF PLAINTIFFS'  
OPPOSITION TO LIBERTY MUTUAL'S  
MOTION TO DISQUALIFY THE  
ROXBOROUGH FIRM**

Date: December 21, 2007  
Time: 10:00 a.m.  
Place: Courtroom 8

Defendant and counterclaimant Liberty Mutual Fire Insurance Company ("LMFIC") submits the following objections to the evidence submitted by plaintiff Largo Concrete, Inc. and plaintiff and counter-defendant N.M.N. Construction, Inc. (collectively "Plaintiffs") in support of their Opposition to LMFIC's Motion to Disqualify Roxborough, Pomerance & Nye from Representing Plaintiffs.

### **LMFIC'S GENERAL OBJECTION**

LMFIC generally objects to paragraphs 2, 3, 4, 9, 10, 12, 23, and 24 of the Declaration of Nicholas P. Roxborough and paragraphs 2, 3, and 10 of the Declaration of Michael B. Adreani submitted in support of Plaintiffs' Opposition on the grounds that the information contained in these paragraphs regarding Mr. Roxborough's and Mr. Adreani's education and experience is entirely irrelevant to the issues before the Court on this Motion. Fed. R. Evid. 402.

### **LMFIC OBJECTIONS TO DECLARATION OF NICHOLAS P. ROXBOROUGH DATED NOVEMBER 30, 2007**

<b><u>Portion of Declaration</u></b>	<b><u>Objections</u></b>	<b><u>Ruling</u></b>
1. Liberty Fire's Best Practice documents were very similar to standard Best Practices that other carriers and TPA's in the industry utilize. As I recall, there was generally very little, if anything, that was unique about Liberty Fire's Best Practice Guidelines.  (Roxborough Decl., pp. 5:3-5.)	Lacks foundation. Fed. R. Evid. 602.  Hearsay. Fed. R. Evid. 802.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled  <input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
2. Attached hereto as Exhibit	Lacks foundation. Fed. R. Evid. 602.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

1	<b><u>Portion of Declaration</u></b>	<b><u>Objections</u></b>	<b><u>Ruling</u></b>
2 3 4 5 6 7 8 9 10	<p>"A" is a true and correct copy of Best Practice Guidelines that one can get as a matter of public record on a website. These Best Practices are from a national claims expert, Doug McCoy who I deposed in the Republic Services action.</p> <p>(Roxborough Decl., pp. 5:5-8.)</p>	<p>Hearsay. Fed. R. Evid. 802.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
11 12 13 14 15 16 17	<p>3. Generally, the areas covered in these Best Practices areas are typical of the areas covered by most workers' compensation claims Best Practices Guidelines in the industry.</p> <p>(Roxborough Decl., pp. 5:9-10.)</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Irrelevant. Fed. R. Evid. 402.</p> <p>Confuses the issues. Fed. R. Evid. 403.</p> <p>Hearsay. Fed. R. Evid. 802.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p> <p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p> <p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p> <p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
18 19 20 21 22 23	<p>4. At the time, Kentucky counsel had already received from the various Liberty defendants, Best Practice Guidelines.</p> <p>(Roxborough Decl., pp. 6:25-27.)</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p> <p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
24 25 26 27 28	<p>5. At the time, they said they did not think much of Defendants' chances of succeeding on their motion to disqualify our firm.</p>	<p>Hearsay. Fed. R. Evid. 802.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

<u>Portion of Declaration</u>	<u>Objections</u>	<u>Ruling</u>
(Roxborough Decl., p. 7:17-19.)		
<p>6. As I have done in the past with any associates who worked on a Liberty case, since Craig has been here, I instructed Mr. Phillips that Mr. Pynes is to have no involvement or access to the Remedy Temp or Largo cases.</p> <p>(Roxborough Decl., p. 8:18-20.)</p>	Hearsay. Fed. R. Evid. 802.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
<p>7. The information contained in these files contains no information regarding a civil law firm's strategies on how to defend the carrier or TPA in workers' compensation bad faith claims mishandling cases.</p> <p>(Roxborough Decl., p. 9:8-10.)</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled  <input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
<p>8. A workers' compensation claim file simply contains the adjustor's notes, the medical records concerning the nature and extent of a worker's injury, whether the file had been investigated or not, whether the insured was defended in the action,</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled  <input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

1	<u>Portion of Declaration</u>	<u>Objections</u>	<u>Ruling</u>
2 3 4 5 6 7 8 9	records regarding payments of medical bills, medical liens, etc. Many of the records are indeed a matter of public record at the workers compensation appeals boards throughout California. (Roxborough Decl., p. 9:16-20.)		
10 11 12 13 14 15 16 17 18 19	9. There is absolutely nothing confidential in a workers' compensation claim file in terms of a carrier or third party administrator's strategies of defending itself against allegations of workers' compensation bad faith claims handling practices. (Roxborough Decl., p. 9:21-25.)	Lacks foundation. Fed. R. Evid. 602.  Hearsay. Fed. R. Evid. 802.  Irrelevant. Fed. R. Evid. 402.  Argumentative.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled  <input type="checkbox"/> Sustained <input type="checkbox"/> Overruled  <input type="checkbox"/> Sustained <input type="checkbox"/> Overruled  <input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
20 21 22 23 24 25 26 27 28	10. As this honorable court can see, I did not learn anything about what Liberty Fire redacts in workers' compensation claim files from Mr. Pynes- I learned it from Liberty Fire and their retained civil litigation counsel, in the <u>Kimco</u> and <u>Remedy</u> <u>Temp</u> cases.	Lacks foundation. Fed. R. Evid. 602.  Argumentative.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled  <input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

1	<u>Portion of Declaration</u>	<u>Objections</u>	<u>Ruling</u>
2	(Roxborough Decl., p. 10:18-20.)		
3	11. In addition, I have reviewed	Lacks foundation. Fed. R. Evid. 602.	<input type="checkbox"/> Sustained
4	the pleadings identified on this		<input type="checkbox"/> Overruled
5	docket sheet and determined that	Hearsay. Fed. R. Evid. 802.	<input type="checkbox"/> Sustained
6	neither Ms. Yee nor Lisa Kralik		<input type="checkbox"/> Overruled
7	Hansen's name appear on any of the		
8	listed pleadings and the only		
9	pleading executed by Ms. Hansen		
10	was the Notice of Ex Parte		
11	Application and Ex Parte		
12	Application for an Order Staying the		
13	Action by Stipulation. Although this		
14	document was executed by Ms.		
15	Hansen, her name does not appear as		
16	attorney of record; it appears she		
17	executed the pleading simply on		
18	behalf of Susan Olson.		
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20	(Roxborough Decl., pp. 11:1-6.)		
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**LMFIC'S OBJECTIONS TO DECLARATION OF**  
**MICHAEL B. ADREANI DATED NOVEMBER 30, 2007**

<b><u>Portion of Declaration</u></b>	<b><u>Objections</u></b>	<b><u>Ruling</u></b>
<p>1. What is different about Liberty is that Liberty does not have a standard workers' compensation claims manual. Rather, Liberty utilizes a document called "Best Practices" to instruct adjusters on how to handle workers' compensation claims. I have confirmed this with the receipt of documents throughout the years, the noted absence of a claims manual in document production, through deposition testimony of various witnesses on various cases, and through written discovery. Liberty has itself made the representation to me that it does not use a claims manual for its workers' compensation adjusters.</p> <p>(Adreani Decl., p. 3:5:11.)</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p> <p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>2. To the extent Liberty does utilize "Best Practices" and any other document in training and</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>



<u>Portion of Declaration</u>	<u>Objections</u>	<u>Ruling</u>
<p>providing instruction or protocols to its adjusters in workers compensation cases, I was provided that information and documents prior to Mr. Pynes ever joining this firm.</p> <p>(Adreani Decl., p. 3:12-14.)</p>		
<p>3. Liberty Fire responded that <u>all such documents had been produced</u> and, when pressed, confirmed that no claims manual is actually used by Liberty Fire.</p> <p>(Adreani Decl., p. 4:17-18.)</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p> <p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>4. All documents related to the manner in which Liberty Fire handles workers' compensation claims, and how Liberty Fire trains workers' compensation adjusters, therefore, were in my firm's possession by the end of 2002 — over two years before Mr. Pynes joined our firm. (Adreani Decl., pp. 4:25-5:1.)</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>5. Specifically, my notes from</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>



<u>Portion of Declaration</u>	<u>Objections</u>	<u>Ruling</u>
<p>1 <i>Kimco</i> indicate that all of the</p> <p>2 documents Liberty Fire considered</p> <p>3 its training and adjusting “manuals”</p> <p>4 were produced to me, and Bates</p> <p>5 labeled Nos. LM 50869-5 1987.</p> <p>6 (Adreani Decl., p. 5:2-4.)</p> <p>7</p> <p>8</p>	<p>Hearsay. Fed. R. Evid. 802.</p>	<p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p>
<p>9 6. I also specifically recall</p> <p>10 Liberty Fire’s counsel</p> <p>11 acknowledging to me on the record</p> <p>12 of a deposition that, with regard to</p> <p>13 workers’ compensation training and</p> <p>14 adjusting manuals used by Liberty</p> <p>15 Fire, “all such documents had been</p> <p>16 produced” in the <i>Kimco</i> case.</p> <p>17 (Adreani Decl., p. 5:6-9.)</p> <p>18</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>	<p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p> <p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p>
<p>19 7. It was well known to Ms.</p> <p>20 Hansen and Ms. Olson that Mr.</p> <p>21 Pynes was working at my firm at the</p> <p>22 time the <i>RemedyTemp</i> case was</p> <p>23 filed.</p> <p>24 (Adreani Decl., p. 6:1-2.)</p> <p>25</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p>	<p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p>
<p>26 8. On one occasion, early in the</p> <p>27 case at an in person “meet and</p> <p>28</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>	<p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p> <p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p>

1	<u>Portion of Declaration</u>	<u>Objections</u>	<u>Ruling</u>
2 3 4 5 6 7 8 9 10	confer" under Central District Local Rule 7 at my office, both Ms. Hansen and Ms. Olson said hello to Mr. Pynes personally while in my office. On other occasions both Ms. Hansen and Ms. Olson asked me to say hello to Mr. Pynes.  (Adreani Decl., p. 6:5-8.)		
11 12 13 14 15 16 17 18 19 20	9. During the course of the <i>RemedyTemp</i> case, I have received through discovery and Rule 26 all of the same training and adjusting materials I received in the <i>Kimco</i> case, all with Liberty's full knowledge of Mr. Pynes' employment at my firm.  (Adreani Decl., p. 6:9-14.)	Lacks foundation. Fed. R. Evid. 602.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
21 22 23 24 25 26 27 28	10. At that time, co-counsel in Kentucky had long since obtained all of the workers' compensation training and adjusting manuals, including Best Practices, from Liberty. These were all of the same documents I had seen in <i>Kimco</i> and	Lacks foundation. Fed. R. Evid. 602.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

<u>Portion of Declaration</u>	<u>Objections</u>	<u>Ruling</u>
RemedyTemp. (Adreani Decl., p. 8:1-5.)		

**LMFIC'S OBJECTIONS TO DECLARATION OF  
CRAIG S. PYNES DATED NOVEMBER 30, 2007**

<u>Portion of Declaration</u>	<u>Objections</u>	<u>Ruling</u>
1. The claim files I reviewed contained no confidential information regarding Liberty Mutual Insurance Company or Liberty Mutual Fire Insurance Company and were individually titled "applicant's name versus Tony's Fine Foods".  (Pynes Decl., p. 2:20-22.)	Lacks foundation. Fed. R. Evid. 602.  Hearsay. Fed. R. Evid. 802.  Improper legal conclusion. Fed. R. Evid. 701.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled  <input type="checkbox"/> Sustained <input type="checkbox"/> Overruled  <input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
2. At no time during my employment with Kern & Wooley did I ever seek or gain access to information that was confidential to Liberty Mutual Fire Insurance Company, or any other Liberty entity, regarding their policies or strategies associated with workers' compensation bad faith claims	Lacks foundation. Fed. R. Evid. 602.  Improper legal conclusion. Fed. R. Evid. 701.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled  <input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

<u>Portion of Declaration</u>	<u>Objections</u>	<u>Ruling</u>
<p>1 mishandling matters.</p> <p>2</p> <p>3 (Pynes Decl., p. 4:17-20.)</p> <p>4</p>		
<p>5 3. At no time during my</p> <p>6 employment with Kern &amp; Wooley</p> <p>7 did I obtain any information that was</p> <p>8 confidential to Liberty Mutual Fire</p> <p>9 Insurance Company's, or any other</p> <p>10 Liberty entity, regarding their</p> <p>11 policies or strategies associated with</p> <p>12 workers' compensation bad faith</p> <p>13 claims mishandling litigation.</p> <p>14 (Pynes Decl., p. 4:21-24.)</p> <p>15</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Improper legal conclusion. Fed. R. Evid. 701.</p>	<p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p> <p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p>
<p>16 4. Before leaving Kern &amp;</p> <p>17 Wooley, I personally discussed my</p> <p>18 offer to work for Roxborough,</p> <p>19 Pomerance &amp; Nye with Lisa Kralik</p> <p>20 Hansen. We specifically discussed</p> <p>21 that the Roxborough, Pomerance &amp;</p> <p>22 Nye firm handles workers'</p> <p>23 compensation bad faith claims cases</p> <p>24 distinct from the type of work I had</p> <p>25 done at Kern &amp; Wooley. She agreed</p> <p>26 that this was a completely new area</p> <p>27 of practice for me and a wonderful</p> <p>28 opportunity for me to learn a</p>	<p>Hearsay. Fed. R. Evid. 802.</p>	<p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p>

1	<u>Portion of Declaration</u>	<u>Objections</u>	<u>Ruling</u>
2	completely different area of the legal		
3	practice.		
4	(Pynes Decl., p. 6:3-8.)		
5			
6	5. However, by that time, I had	Lacks foundation. Fed. R. Evid. 602.	<input type="checkbox"/> Sustained
7	seen other similar Best Practices		<input type="checkbox"/> Overruled
8	Guidelines from other carriers and	Hearsay. Fed. R. Evid. 802.	<input type="checkbox"/> Sustained
9	third party administrators. My		<input type="checkbox"/> Overruled
10	recollection is that there was not		
11	anything very significantly different		
12	from the approximate six page		
13	document that I had seen in other		
14	cases.		
15	(Pynes Decl., pp. 7:5-7.)		
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17	6. Whatever evidence I	Lacks foundation. Fed. R. Evid. 602.	<input type="checkbox"/> Sustained
18	reviewed in the Kentucky action was		<input type="checkbox"/> Overruled
19	evidence that Kentucky counsel had		
20	obtained from defendants in that		
21	matter.		
22	(Pynes Decl., p. 7:15-20.)		
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26 Having considered LMFIC's evidentiary objections,

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1 IT IS HEREBY ORDERED AND ADJUDGED that LMFIC's evidentiary  
2 objections are GRANTED as marked above.

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4 IT IS SO ORDERED.

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6 Dated: December \_\_\_, 2007

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8 THE HONORABLE CHARLES R. BREYER  
9 UNITED STATES DISTRICT COURT JUDGE  
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1 Respectfully Submitted by:

2 Dated: December 14, 2007

3 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

4  
5 By



6 TED C. LINDQUIST, III

7 Attorneys for Defendant and Counterclaimant

8 LIBERTY MUTUAL FIRE

9 INSURANCE COMPANY  
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